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1 MAURIELLO LAW FIRM, APC
2 THOMAS D. MAURIELLO (SBN 144811)
3 1181 Puerta Del Sol, Suite 120
4 San Clemente, CA 92673
5 Telephone: (949) 542-3555
6 Facsimile: (949) 606-9690
7 Email: tomm@maurlaw.com

(Additional Counsel Appear on Signature Page)

11 FEB 18 AM 11:24
CLERK'S OFFICE, DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

10 SEAN GASS, on behalf of himself and all
11 others similarly situated,

12 Plaintiff,
vs.

13 BEST BUY CO., INC.,

14 Defendant.

Case No. **CV 11-01507 SJO (JG)**

CLASS ACTION

COMPLAINT FOR DAMAGES

JURY TRIAL DEMAND

18 Plaintiff, Sean Gass, ("Plaintiff"), by and through his attorneys, brings this action, on
19 behalf of himself and all others similarly situated, against Defendant, Best Buy Co., Inc. ("Best
20 Buy" or "Defendant"), and, except for information based on his own personal knowledge, alleges
21 on information and belief based on the investigation conducted by his counsel as follows:

22 **NATURE OF THIS ACTION**

24 1. Plaintiff brings this proposed class action on behalf of himself and all other
25 individuals who, during the largest period allowed by law ("Relevant Time Period"), made one
26 or more purchases from a Best Buy store in California with a credit card and had their ZIP code
27 recorded by Best Buy during the transaction.

28 2. As the Supreme Court of California recently held in *Pineda v. Williams-Sonoma
Stores, Inc.*, "personal identification information, as that term is used in section 1747.08,

1 includes a cardholder's ZIP code." Thus, as set forth below, by requesting and recording the ZIP
 2 codes of Plaintiff and other Class members, Defendant violated the Song-Beverly Credit Card
 3 Act of 1971 (Civ. Code, Section 1747 *et seq.*) ("Act"), which "prohibits businesses from
 4 requesting that cardholders provide 'personal identification information' during credit card
 5 transactions, and then recording that information." *Id.* at *2. Defendant's conduct further
 6 violated California's Unfair Competition Law, California Business & Professions Code Section
 17200, *et seq.* ("UCL").

7 **JURISDICTION AND VENUE**

8 3. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The
 9 matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000
 10 and Plaintiff and members of the Class are citizens of a state different from that of Defendant.

11 4. Venue is proper in this Court pursuant to 28 U.S.C. §1391 because: (a) Defendant
 12 is authorized to conduct business in this district and has intentionally availed itself of the laws
 13 and markets within this district; (b) Defendant does substantial business in this district; (c)
 14 Defendant is subject to personal jurisdiction in this district; (d) Plaintiff's transactions occurred
 15 in this district; and (e) Plaintiff resides in this district.

16 **PARTIES**

17 5. Plaintiff, at all times relevant to this action, has been a citizen of California,
 18 residing in Manhattan Beach, California.

19 6. Best Buy is a Minnesota corporation which, upon information and belief,
 20 maintains its principal place of business in Minnesota.

21 7. In this Complaint, when reference is made to any act, deed or conduct of
 22 Defendant, the allegation means that Defendant engaged in the act, deed or conduct by or
 23 through one or more of its officers, directors, agents, employees or representatives who was
 24 actively engaged in the management, direction, control or transaction of the ordinary business
 25 and affairs of Defendant.

26 ///

27 ///

28 ///

FACTUAL ALLEGATIONS

1 8. On or about October 27, 2010 and December 23, 2010, Plaintiff visited a Best
2 Buy retail store situated in El Segundo, California and purchased various items utilizing a credit
3 card to pay for the purchases (“Transactions”).

4 9. In the course of each of the Transactions, the cashiers at Best Buy’s store situated
5 in El Segundo, California asked Plaintiff for his ZIP code.

6 10. In the course of each Transaction, Plaintiff complied with the request and
7 provided his ZIP code information as requested by Best Buy, and Best Buy recorded that
8 information.

CLASS ACTION ALLEGATIONS

9 11. Plaintiff brings this lawsuit, both individually and as a class action, on behalf of
10 similarly situated individuals pursuant to Federal Rule of Civil Procedure 23(b)(2) and (3).

11 12. Plaintiff seeks to represent a class defined as follows:

12 **Class:** All individuals who made one or more purchases from a
13 Best Buy store in California with a credit card and had their ZIP
14 code recorded by Best Buy during the transaction (“Class”).

15 13. Excluded from the Class are: (1) Defendant, any entity in which Defendant has a
16 controlling interest, and its legal representatives, officers, directors, employees, assigns and
17 successors; (2) the Judge to whom this case is assigned and any member of the Judge’s staff or
18 immediate family; and (3) Plaintiff’s counsel.

19 14. While the exact number of Class members is unknown to Plaintiff at this time, the
20 number can easily be obtained through discovery and a review of Defendant’s documents and
21 records. Plaintiff reasonably believes that there are at least tens of thousands of Class members.
22 Therefore, the Class members are so numerous that individual joinder of all Class members is
23 impracticable under Calif. R.Civ.P. 23(a)(1).

24 15. There is a well-defined community of interest and common questions of law and
25 fact which predominate over any question affecting only individual members of the Class. These
26 common legal and factual questions, which do not vary from members of the Class and which
27 may be determined without reference to the individual circumstances of any members of the
28 Class, include, but are not limited, to the following:

- 1 a) Whether Plaintiff and Class members used credit cards to make purchases from
- 2 Best Buy;
- 3 b) Whether Defendant requested Class members' ZIP codes;
- 4 c) Whether Defendant recorded Class members' ZIP codes;
- 5 d) Whether Defendant's conduct violated the Act and the UCL; and
- 6 e) The appropriate measure of statutory penalty to which the members of the Class
- 7 are entitled.

8 16. Plaintiff's claims are typical of the claims of the proposed Class, and Plaintiff will
9 fairly and adequately represent and protect the interests of the proposed Class. Plaintiff does not
10 have any interests antagonistic to those of the Class. Plaintiff has retained competent counsel
11 experienced in the prosecution of this type of litigation. The questions of law and fact common
12 to the members of the Class, some of which are set out above, predominate over any questions
affecting only individual members of the Class.

13 17. A class action is superior to all other available means for fairly and efficiently
14 adjudicating the controversy. In this regard, the Class members' interests in individually
15 controlling the prosecution of separate actions is low given the magnitude, burden and expense
16 of individual prosecutions against large corporations such as Defendant. Further, neither
17 Plaintiff nor his counsel is aware of any litigation concerning this controversy already begun by
18 any of the Class members. It is desirable to concentrate this litigation in this forum to avoid
19 burdening the courts with individual lawsuits. Individualized litigation presents a potential for
20 inconsistent or contradictory judgments, and also increases the delay and expense to all parties
21 and the court system presented by the legal and factual issues of this case. By contrast, the class
22 action procedure here will have no management difficulties. Defendant's records and the records
23 available publicly will easily identify the Class members. Finally, proceeding as a class action
24 provides the benefits of single adjudication, economies of scale and comprehensive supervision
25 by a single court.

26 18. Defendant has acted and refused to act on grounds generally applicable to the
27 Class, making appropriate final injunctive relief with respect to the Class as a whole.

COUNT I

VIOLATION OF THE SONG-BEVERLY CREDIT CARD ACT

19. Plaintiff realleges and incorporates by reference each of the preceding paragraphs.

20. The Act provides in pertinent part: “[N]o person, firm, partnership, association, or corporation that accepts credit cards for the transaction of business shall...(2) Request, or require as a condition to accepting the credit card as payment in full or in part for goods or services, the cardholder to provide personal identification information, which the person, firm, partnership, association, or corporation accepting the credit card writes, causes to be written, or otherwise records upon the credit card transaction form or otherwise.”

21. Pursuant to the Supreme Court of California, the term “personal identification information” as contained in the Act “includes a cardholder’s ZIP code.” *Pineda*, at *18.

22. Defendant is a “person, firm, partnership, association, or corporation that accepts credit cards for the transaction of business,” as that phrase is used the Act, Section 1747.08(a).

23. During the Relevant Time Period, Plaintiff paid for purchases made at a Best Buy retail store located in California with a credit card. During these Transactions, Defendant requested that Plaintiff provide his ZIP code, which request Plaintiff complied with. Defendant recorded Plaintiff's ZIP code.

24. Defendant's actions as described above violate the Act, entitling Plaintiff and the other members of the Class to recover the statutory penalties contained therein.

COUNT II

VIOLATION OF THE UCL

25. Plaintiff realleges and incorporates by reference each of the preceding paragraphs.

26. Defendant has engaged in unfair, unlawful, and fraudulent business practices as set forth above.

27. By engaging in the above-described acts and practices, Defendant has committed one or more acts of unfair competition within the meaning of the UCL.

28. The injury to consumers by this conduct outweighs any alleged countervailing benefit to consumers or competition under all of the circumstances.

29. Defendant's acts and practices are unlawful because they violate the Act (as described in detail herein).

30. Plaintiff, on behalf of himself and the Class, seeks an Order of this Court

1 awarding all relief permitted under the UCL.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiff, on his own behalf and on behalf of the members of the Class,
4 respectfully requests judgment against Defendant as follows:

5 a) certifying the Class as a class action pursuant to Rule 23(b)(3) and 23(b)(2);
6 b) appointing Plaintiff and his counsel to represent the Class;
7 c) finding and declaring Defendant's acts and practices as described herein to be
8 unlawful and in violation the Act and the UCL;
9 d) ordering Defendant to provide notice to the Class members;
10 e) ordering Defendant to pay statutory penalties pursuant to Section 1747.08(e)
11 in the maximum amount permitted by law;
12 f) ordering injunctive relief as appropriate;
13 g) awarding reasonable attorneys' fees and expenses as appropriate; and
14 h) awarding such other and further relief as this Court may deem just and proper.

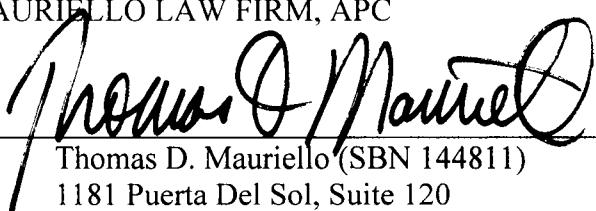
15 **JURY DEMAND**

16 Plaintiff demands a trial by jury of all issues so triable.

17 Dated: February 18, 2011

18 MAURIELLO LAW FIRM, APC

19 By



20 Thomas D. Mauriello (SBN 144811)
21 1181 Puerta Del Sol, Suite 120
22 San Clemente, CA 92673
23 Phone: (949) 542-3555
24 Fax: (949) 606-9690
25 tomm@maurlaw.com

26 Rose F. Luzon (SBN 221544)
27 SHEPHERD FINKELMAN MILLER & SHAH,
28 LLP
401 West A Street
Suite 2350
San Diego, CA 92101
Phone: 619-235-2416
Fax: 619-234-7334
rruzon@sfmslaw.com

1 James C. Shah (SBN 260435)
2 SHEPHERD, FINKELMAN, MILLER & SHAH,
3 LLP
4 35 E. State Street
5 Media, PA 19063
6 Phone: 610-891-9880
7 Fax: 610-891-9883
8 jshah@sfmslaw.com

9 Jeffrey S. Goldenberg
10 Todd B. Naylor
11 GOLDENBERG SCHNEIDER & GROH, LPA
12 35 East Seventh Street, Suite 600
13 Cincinnati, OH 45202
14 Phone: 513-345-8291
15 Fax: 513-345-8294
16 jgoldenber@gslegal.com
17 tnaylor@gslegal.com
18 Pro Hac Motions to be filed

19 **Attorneys for Plaintiff**

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge S. James Otero and the assigned discovery Magistrate Judge is Jay C. Gandhi.

The case number on all documents filed with the Court should read as follows:

CV11- 1507 SJO (JCGx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====
NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) SEAN GASS, on behalf of himself and all others similarly situated	DEFENDANTS BEST BUY CO., INC.			
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide name.) MAURIELLO LAW FIRM, APC, THOMAS D. MAURIELLO, ESQ., 1181 Puerto Del Sol, Suite 120, San Clemente, CA 92673 Tel: (949) 542-3555	Attorneys (If Known) Unknown			
II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) Citizen of This State <input checked="" type="checkbox"/> 1 <input type="checkbox"/> 2 Incorporated or Principal Place of Business in this State <input type="checkbox"/> 4 <input checked="" type="checkbox"/> 5 Citizen of Another State <input type="checkbox"/> 2 <input checked="" type="checkbox"/> 3 Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 5 <input checked="" type="checkbox"/> 6 Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input type="checkbox"/> 4 Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 7			
IV. ORIGIN (Place an X in one box only.) <input checked="" type="checkbox"/> 1 Original <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify): <input type="checkbox"/> 6 Multi-District Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge				
V. REQUESTED IN COMPLAINT: JURY DEMAND : <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (Check 'Yes' only if demanded in complaint.)				
CLASS ACTION under F.R.C.P. 23: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				
VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) 28 USC Sec. 1332(d)(2) - Matter in controversy exceeds \$5,000,000, and Plaintiff and certain class members are residents of different states than Defendant				
VII. NATURE OF SUIT (Place an X in one box only.)				
OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/cts. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 510 Selective Service <input type="checkbox"/> 530 Securities/Commodities/ Exchange <input type="checkbox"/> 575 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Tax Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS <input type="checkbox"/> 310 Personal Injury <input type="checkbox"/> 315 Airplane <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employees' Liability <input type="checkbox"/> 340 Marine Product Liability <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 365 Personal Injury- Med Malpractice <input type="checkbox"/> 370 Other Product Liability <input type="checkbox"/> 380 Asbestos Personal Injury Product Liability <input type="checkbox"/> 385 Personal Injury- Product Liability <input type="checkbox"/> 390 Motor Vehicle Product Liability <input type="checkbox"/> 395 Personal Injury- Product Liability <input type="checkbox"/> 400 All Other Product Liability	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 520 Other Personal Property Damage <input type="checkbox"/> 530 Other Personal Property Damage <input type="checkbox"/> 540 Product Liability <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Other Personal Property Damage <input type="checkbox"/> 570 Other Personal Property Damage <input type="checkbox"/> 580 Other Personal Property Damage <input type="checkbox"/> 590 Liquor Laws <input type="checkbox"/> 600 R.R. & Truck <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Copyrights <input type="checkbox"/> 635 Patent <input type="checkbox"/> 640 Trademark SOCIAL SECURITY <input type="checkbox"/> 650 R.R. & Truck <input type="checkbox"/> 660 Airline Regs <input type="checkbox"/> 670 Occupational Safety /Health <input type="checkbox"/> 680 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Rel. Inv. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395F) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWV (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

CV11-01507

FOR OFFICE USE ONLY: Case Number:

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes
 If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes
 If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b)

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Plaintiff Sean Gass	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c)

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Defendant Best Buy Co., Inc. - Minnesota (State of Residence)

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): Thomas D. Marullo **Date:** February 18, 2011

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))